

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Honolulu, Hawaii

January 28, 2005

**Board of Land and
Natural Resources
State of Hawaii
Honolulu, Hawaii**

REGARDING: Request for Approval to Pursue a Statewide
Comprehensive BLNR Coastal Policy

The Board of Land Natural Resources is responsible for the protection and conservation of the State's coastal resources for the benefit of present and future generations.

In the State's coastal areas, coral reefs, sandy white beaches, and scenic seascapes, with their native inhabitants, encircle and protect our 750-mile long shoreline from the ravages of wind and sea.

Hawaii's historical, cultural, environmental, social, recreational and economic foundations are centered on our state's near-shore waters and coastline.

Unlike any other state, Hawaii's welfare is dependent almost entirely upon its coastal environment. Almost half of all of Hawaii land is within only 5 miles of the coastline. Thus, just about any activity in Hawai'i could be described as possibly having an impact on our coastal resources.

Public beaches, the bread and butter of the Hawaii economy, continue to erode exposing public roads and shoreline development to the hazards of erosion; commercial activities many time conflict with residents' activities; water quality concerns borne by both ocean and land based sources of pollution pose serious threats to all users of the marine environment including its natural flora and fauna.

Realizing the above, in November 2003, Department of Land and Natural Resources (DLNR) called a meeting involving a variety of state agencies to discuss the state's ocean and coastal concerns.

These agencies included a variety of divisions with DLNR, as well as representatives from Transportation, Health, Office of Planning, Coastal Zone Management, Tourism, DBEDT and the University of Hawai'i.

In the November 2003 meeting of the ad hoc group, each agency was asked to prioritize their top five ocean and coastal concerns. A set of lists were then shared at the meeting and provided a template for multiple discussions.

When the lists were shared what became clear was that coastal issues are far more complex and broad than first anticipated. (See Attachment 1) It was agreed that these issues were important and that these groups would be willing to work together to address these concerns.

In May 2004, this ad hoc group (with other agencies and individuals) came together, again, to prepare Hawai'i's response to the draft report of the U.S. Commission on Ocean Policy.

On January 6, 2005 Governor Lingle appointed several cabinet members to make up and serve on the newly created Hawaii Ocean and Coastal Council (HOCC.) BLNR Chairperson, Peter Young, was appointed to serve as Chair of the HOCC.

HOCC was formed to provide directed leadership and coordinated actions among all state agencies in addressing Hawaii's ocean and coastal concerns, as well as provide a mechanism for cooperation and collaboration.

The purpose of the Hawaii Ocean and Coastal Council is to gather information and provide advice and recommendations on direction and planning for addressing Hawaii's ocean and coastal matters throughout the State to foster coordinated approaches that support local initiatives on ocean and coastal concerns.

The Hawaii Ocean and Coastal Council consists of the Chairperson of the Board of Land and Natural Resources of the Department of Land and Natural Resources, ex officio, or designee; the Adjutant General of the Department of Defense, ex officio, or designee; the Director of the Business, Economic Development, and Tourism, ex officio, or designee; the Tourism Liaison, ex officio, or designee; the Director of the Health, ex officio, or designee; the Director of Transportation, ex officio, or designee; the Chairperson of the Board of Agriculture of the Department of Agriculture, ex officio, or designee; the President of the University of Hawaii, ex officio, or designee; and a representative from the Office of Planning.

Hawaii-based representatives from the following entities have been invited to provide nonvoting participant representation on the Hawaii Ocean and Coastal Council: Marine and Coastal Zone Advisory Council, Sea Grant, Hawaii Institute of Marine Biology, National Oceanic and Atmospheric Administration - Pacific Services Center, United States Department of Agriculture - Natural Resources Conservation Service, National Oceanic and Atmospheric Administration - National Marine Fisheries Service, National Oceanic and Atmospheric Administration - National Marine Sanctuaries, United States Geological Survey, Environmental Protection Agency, Western Pacific Regional Fishery Management Council, United States Coast Guard, United States Army Corps of Engineers, City and County of Honolulu, County of Maui, County of Kauai, and County of Hawaii.

The Hawaii Ocean and Coastal Council is a joint effort between state, county and federal governments, as well as the profit and non-profit sectors.

Representatives from respective agencies and organizations with an interest in the well-being of Hawaii pertaining to ocean and coastal issues have been invited to participate, by invitation of the Hawaii Ocean and Coastal Council.

Running a comprehensive program addressing Hawaii's ocean and coastal concerns through a reviewing board of representatives of concerned government agencies will not only eliminate unnecessary duplication of effort and provide maximum leveraging and coordination of existing state funding from all concerned agencies, it will also help promote increased and targeted participation and funding from cooperating entities.

The Hawaii Ocean and Coastal Council provides advice and recommendations on how to:

1. Address the social, cultural, environmental, economic and security issues of the State of Hawaii as they relate to ocean and coastal matters;
2. Identify and understand ocean and coastal concerns from all perspectives;
3. Organize and streamline the process for addressing ocean and coastal issues; and
4. Explore, pursue, and develop additional sources of funding to address ocean and coastal issues, as appropriate.

There is a need for such a reviewing board whose mission would extend beyond Hawaii and which would work, share, and network with similar agencies across the country.

It is anticipated that the Hawaii Ocean and Coastal Council will provide the opportunity to learn from other states about ocean and coastal related issues. Through partnerships and information sharing, the State must take a more proactive role in dealing with ocean and coastal policy throughout the State.

It is intended that a significant partner will be the Coastal States Organization (CSO). The CSO works with and represents the thirty-five United States coastal states, territories, and commonwealths on oceans, lakes, and coastal-related issues.

STATE COMPREHENSIVE COASTAL POLICY

Ultimately, we believe the Board should investigate and consider a comprehensive coastal policy to provide clarity and consistency to management and protection of these important resources.

The key is the understanding that the management and regulation of the State's natural resources is not solely the responsibility of the DLNR. There are other county, state and federal agencies that participate in this noble effort.

For instance, the State Coastal Zone Management Act Chapter 205A, Hawaii Revised Statutes (HRS) is a state law that all agencies of the State and County governments are required to implement.

However, Chapter 205A, HRS consists of policies and objectives (some conflicting), that are often interpreted differently by different agencies. This results in disagreements and conflict between agencies and user groups.

The broader public ends up paying the ultimate price with a reduction in the quality of public services, negative environmental consequences, and an increase in business costs as agencies strive to resolve resource management problems independently.

This is an ideal time to consider a comprehensive or “integrated” coastal policy, as it relates to shoreline management and other coastal concerns. Ideally, such a policy would establish common goals among concerned agencies with regard to beach conservation.

These goals should link and re-enforce planning and decision-making between federal, state, and county authorities, where the land meets the sea.

With an integrated coastal policy, beaches and coastal areas can be protected from poorly planned shoreline projects at no additional public cost, yet with tremendous long-term economic, cultural, and environmental benefits.

This integrated Coastal Policy will illustrate this possibility.

The present effort to produce an integrated coastal policy is an extension of earlier planning ventures within the DLNR. In 1999 the Board of Land and Natural Resources (BLNR) adopted the Coastal Erosion Management Plan (COEMAP) as an internal policy for managing shoreline issues including erosion and coastal development in Hawaii. COEMAP recommends a number of strategic initiatives to improve our State's management of coastal erosion and beach resources.

However, COEMAP's scope is of a general nature, and there is a need to formulate more focused policies in a variety of coastal management areas, including shoreline setbacks, shoreline hardening, enforcement, beach nourishment, intergovernmental collaboration, and development decision-making among others.

It is an objective of the Department to foster a Statewide Comprehensive Coastal Policy to improve overall management of coastal resources. This effort is intended to produce a unified vision for future actions by government as a whole.

Rather than confront the daunting task of an overall, comprehensive policy in a single effort, the proposed policy can be broken down into component “Chapters” and the respective stakeholder groups can address each chapter.

For instance, we can isolate issues into chapters such as “Changing Shoreline” and “Threatened Public and Private Improvements”. Subsequent “Chapters” may deal with “User Conflicts” and “Near Shore Water Quality”.

A concurrent theme throughout each chapter concerns issues of government jurisdiction, education and outreach, intergovernmental cooperation, and the marshalling of resources necessary to accomplish these objectives.

As each Chapter is developed, respective stakeholder groups, including DLNR line divisions such as the Office of Conservation and Coastal Lands, Aquatic Resources, Boating and Ocean Recreation, Conservation and Resources Enforcement and Historic Preservation, as well as others associated with coastal concerns are brought in.

The discussion then evolves outward to include other state, county and federal agencies as needed.

Coastal Policy encompasses many different and complex issues. Because of these issues, we propose the following as suggested “Chapters” and “Sub-Chapters” of the overall Coastal Policy:

The Changing Shoreline

- Coastal hazard mitigation
- Shoreline armoring
- Erosion management
- Coastal characteristics

Public and Private Improvements

- Encroachment onto public property
- Coastal building setbacks
- Shoreline certification
- Coastal density
- Construction guidelines

User Conflicts

- Native Hawaiian traditional and cultural rights
- Public access
- Capacity concerns
- Commercial activities
- Conflicts between & within user groups
- Cruise ship management

Near shore water concerns

- Water Quality
- Fishing
- Ballast water, hull-fouling & waste disposal from ships
- Marine ecosystem management
- Cage aquaculture
- Coastal islands, wetlands, dunes, estuaries and streams

Resources - Jurisdiction - Outreach

- Enforcement
- Funding alternatives
- Planning
- Permitting
- Education

These potential chapters are just a summary of many of the issues which BLNR Coastal Policy will aim to address.

Review of “First Chapters” of the Coastal Policy - Following is an introduction to the first and second chapters of the proposed policy.

OUR CHANGING SHORELINE

Value of Beaches

Public access to and along our shoreline is an inalienable right of every citizen and is regarded by the courts and State law as inviolable. These rights are firmly rooted in the public trust doctrine, which is an ancient concept, stating essentially that the public has the right to use tidal waters for certain

purposes such as fishing and navigation. So important is this right that in 1905, the Hawaii Supreme court applied the public trust doctrine to stop the construction of a seawall on Waikiki Beach.

In their decision, they stated “walls and buildings extending seaward beyond the high water mark block the right of way and furnish no compensatory advantages to the public....” The public trust doctrine was expanded in the 1970’s to include the entire sandy beach in *Sotomura*. The Hawaii Supreme Court declared that “public policy favors extending to the public use and ownership to as much of Hawaii’s shoreline as is reasonably possible.”

Thus, in contemporary Hawaii, the entire sandy beach extending to the mauka edge of the shoreline, being the highest wash of the waves, is regarded as public domain. Why are beaches of such great importance that access and use is guaranteed by law?

In contemporary Hawaiian society, beaches serve critically important environmental and economic functions without which the State would certainly languish.

- Beaches and coastal areas are part of Hawaii’s culture and heritage. They provide enjoyment, ocean access, and spiritual fulfillment to Hawaii’s people.
- Beaches are the backbone of Hawaii’s multi-billion dollar visitor economy that provides the majority of the state’s jobs and income.
- Beaches and adjoining sand dunes are critical for flood and erosion prevention serving as a natural buffer to prevent or lower property damage from storm waves and surge, tsunamis, sea-level rise, and seasonal high surf.
- As beaches narrow and disappear, shoreline properties become increasingly vulnerable to numerous coastal hazards.
- Beaches and dunes are important elements of our shoreline environment and are critical to the health of the coastal marine ecosystem.

Unfortunately, sandy beaches in Hawaii have been lost at an alarming rate due to poor management practices including the construction of seawalls (vertical walls) and revetments (sloping walls), sand mining, and the destruction of sandy dunes, associated with incompatible development.

Studies conducted at the University of Hawaii show that shoreline hardening¹ has resulted in the loss of nearly 25 percent of Oahu’s sandy beaches. Beach loss in the State due to hardening of the shoreline is not limited to the island of Oahu. All of the main Hawaiian Islands have seen the loss or narrowing of their sandy beaches due to shoreline hardening.

Shoreline Hardening

It has been well documented that seawalls and shoreline structures on a chronically eroding shoreline can lead to beach loss or narrowing by restricting the natural movement of the shoreline landward². With a hard structure in place the beach may not maintain the original width as it retreats landward and instead narrows (Figure 1).

¹Shoreline hardening is the fortification of land to retard coastal erosion. Hardening includes such things as seawalls, revetments, bulkheads, jetties, groins, sand bags, and any hard material used to retard or stop land loss by coastal erosion.

² *Beach Loss Along Armored Shorelines on Oahu, Hawaiian Islands*. 1997. Fletcher, H. Charles., et. al. . Journal of Coastal Research. Vol. 13, No. 1. pg. 209-215.

The Department attempts to mitigate negative impacts to the coastal system from shore protection structures by encouraging alternative erosion control measures in place of constructing seawall and revetments.

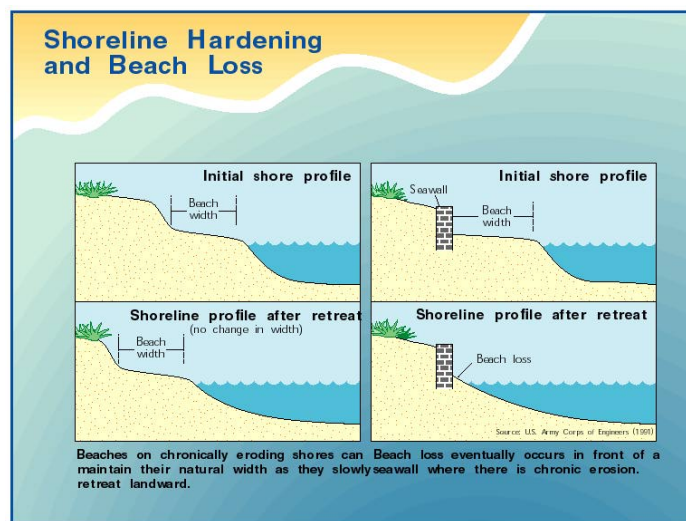


Figure 1. Shoreline Hardening and Beach Loss

Although shoreline hardening is the most direct factor leading to beach loss, it is, in truth, the inevitable result of several interrelated socio-political, and economic conditions that promote the mismanagement of beach resources in Hawaii.

Some factors to consider in this complicated equation include: 1) the ill-informed practice of maximizing development as close to the shoreline as possible which “pinches” the beach between immovable development and the shifting sea. This can lead to narrowing of the active coastal zone within which beaches normally migrate; and 2) long-term shoreline change is rarely considered in the siting of coastal structures largely because of a historical lack of adequate coastal erosion data.

Among abutting owners and developers, and even within some management agencies, there is a mentality that mitigating erosion problems is an activity that can be delayed until later. This leads to a flawed development process characterized by poor planning decisions that are reinforced by subsequent poor siting selection resulting in high vulnerability to erosion hazards.

The end result is the rise of remedial erosion conflicts (i.e., seawall construction) between abutting owners, government authorities, and environmental groups. It is ironic therefore, that the very thing that draws people to the beach may result in its demise.

Advances in modern marine geology and oceanography, coupled with daily news accounts of coastal disasters, highlight the dynamic but dangerous interface between the sea and the shore. This realization has fostered efforts by State and local governments across the country to focus attention on development within their respective coastal zones and to develop more proactive programs to address these pressing development and coastal hazards issue.

In Hawaii, these efforts have been ongoing for the past 25 years. Upon creation of the Hawaii Coastal Zone Management Program in the late 1970s, new policies and objectives were established to address a number of burgeoning coastal problems as well as improve the management of shoreline areas.

Numerous studies were completed during intervening years to address issues including coastal erosion and other hazards. These studies include: 1) Beach Change on Oahu, 1981; 2) Oahu Shoreline Study, 1988; 3) Hawaii Erosion Management Study, 1989; 4) Oahu Shoreline Management Plan, 1991; 5) Hawaii Ocean Resources Management Plan, 1991; 6) Beach Management Plan, 1992; 7) Beach Management Plan for Maui, 1997; and 8) Hawaii Coastal Erosion Management Plan, 1999, just to name a few³. Several new studies are currently in publication.

Despite the establishment of the Hawaii Coastal Zone Management Program in the late '70s, empowerment of the respective counties to manage coastal development within the Special Management Area (SMA), and numerous studies and reports on the subject of coastal zone management; coastal communities in Hawaii continue to face serious erosion hazards, seawalls continue to be built, and beaches continue to vanish with the continued development of the coastal zone.

The Department of Land and Natural Resources (DLNR), is poised to implement new, proactive and sustainable practices to improve beach management in Hawaii.

These practices rely upon credible supporting scientific studies and data on which to base decisions, and changes to the planning process accompanying coastal development.

This commitment takes on a critical light given global and local predictions for continued, possibly accelerated sea-level rise and the ongoing focus of intense development along the Hawaiian shoreline.

With the establishment of new institutional capacity at the state (Office of Conservation and Coastal Lands - OCCL), county (SMA Programs) and federal (NOAA Pacific Services Center) levels, there are new opportunities to vastly improve our system of shoreline management.

BASIC PROBLEMS ASSOCIATED WITH SHORELINE DEVELOPMENT

Problems associated with coastal development begin when planning and siting decisions are made without recognizing and acknowledging the potential for future shoreline change.

The problem is compounded by the legal bifurcation of administrative responsibilities between state and county governments at the shoreline, even though the natural beach system forms one highly integrated coastal system straddling county and state jurisdictions.

The State is responsible for lands seaward of the shoreline (sandy beaches annually inundated by waves). The County is generally responsible for areas landward of the shoreline, including coastal dunes that share sand with the beach (Figure 2).

³ Summaries of these reports are found in the Hawaii Coastal Erosion Management Plan (COEMAP, 2000) and the Hawaii Coastal Hazard Mitigation Guidebook, (In publication).

Thus, long-range planning, or even short term siting decisions by County authorities may not adequately consider and evaluate factors that lie outside of (seaward) their legal jurisdiction, such as the effects of sea-level rise, waves and currents, and other factors in coastal erosion including shoreline hardening.



Figure 2. Example of State vs. County Jurisdiction of the Coastal Zone.

Three (3) of the Counties do not consider shoreline change in their planning and siting decisions as evidenced by their lack of variable erosion-based shoreline setbacks⁴.

The result is that long-term erosion trends typically are not considered during the planning process.

On shorelines undergoing chronic erosion, the inevitable outcome is property damage, seawall construction, beach loss and political and social conflict.

As the retreating shoreline encounters developed structures that are improperly sited on the basis of county procedures that are grounded on the inadequate state setback of 40 feet, the sandy beach, which is under the jurisdiction of the state, begins to sustain impacts in the form of narrowing and eventual demise.

Faced with chronic erosion and land loss, abutting owners feel their only relief is to harden the shoreline. Unfortunately, this often results in yet another poor decision (this time by the landowner) to construct an illegal seawall or revetment.

The state becomes involved through enforcement actions further complicating the situation. This is the vicious vector of coastal erosion: flawed planning producing poor siting, development threatened by

⁴ The County of Maui recently adopted new Shoreline Setback rules based on variable erosion rates. The County is currently utilizing this rule in planning and siting decisions. After one year of implementation, Maui's new rules have experienced no legal challenge and the Planning Director reports satisfaction with the results.

erosion, construction of shoreline hardening leading to beach loss, and loss of public resources (access as well as the beach environment) (Figure 4).



Figure 4. Example of distinction between beach loss and coastal erosion.

The present system is almost entirely reactionary and contentious.

Because there has been little to no planning for long-term shoreline change, the response is always time-critical and completely reactionary every time a property owner or agency encounters an erosion event and potential property damage is apparent.

Requests for permitted actions such as shoreline hardening, end up being decided on a case by case basis without the guidance of any overarching criteria, goal or in reference to the existing policies on coastal preservation and instead focus only on the immediate and urgent nature of the erosion.

Ultimately, authorities experience reduced effectiveness in dealing with remedial erosion problems because the state and counties have no coordinated process to deal with this problem despite the fact that the counties share of federal CZM funds requires such coordination.

EXISTING REGULATIONS AND POLICIES

Coastal erosion and its effects seriously challenge managers individually and in their capacity as planning and regulatory institutions. This is due to poor planning and siting of coastal structures and the bifurcation of County and State responsibilities at the shoreline.

The problem underscores the need for a more integrated approach to shoreline management that unifies different government agencies responsible for regulating shoreline development, and that relies on their technical ability to offer viable, non-regulatory alternatives that achieve a balance between shoreline development and conservation.

This does not mean that effective tools such as implementing greater shoreline setbacks, relocating threatened structures, beach restoration, or government re-organization will be acceptable to everyone, nor will it be affordable or painless.

There will be challenging and difficult decisions to be made along the way. But if it is the intention of the present generation of managers to preserve beaches for the future, these decisions need to be made.

In the introduction to his book *Regulating Paradise*, Professor David Callies of the University of Hawaii Law School, proclaims, “*The use of land in Hawaii is intensely regulated.*” Few would argue that Hawaii’s lands and resources are under regulated. Land use controls have been evolving and expanding in Hawaii since the days of the Alii.

Today, land use regulations rain down from all levels of government trying to control a variety of uses and actions. Hawaii as a whole is particularly hard hit because in addition to local land use regulations, it boasts a statewide land use system trying to balance competing developmental and environmental interests.

Hawaii does not need additional land use regulations. Statutes and ordinances are already replete with measures to protect coastal areas, beaches, and communities from the ravages of flooding and erosion.

What is needed is effective use and application of the existing regulatory functions among government levels with consistent and sustainable policies at all levels of government, and its adjustment where flaws are identified. Some of these policies are articulated below.

The Hawaii State Coastal Zone Management program under Chapter 205A 2b & c, Hawaii Revised Statutes, contains ten (10) objectives and policies for the management of the State’s resources. In addition to Section six (6) on “Coastal Hazards” policy number nine (9), “Beach Protection” seeks to do the following:

- (A) *“Locate new structures inland from the shoreline setback to conserve open space, minimize interference with natural shoreline processes, and minimize loss of improvements due to erosion;*
- (B) *Prohibit construction of private erosion-protection structures seaward of the shoreline, except when they result in improved aesthetic and engineering solutions to erosion at the site and do not interfere with existing recreational and water-line activities; and*
- (C) *Minimize the construction of public erosion-protection structures seaward of the shoreline”.*

The DLNR is responsible for the conservation of all beach lands in the State. In addition to implementing the policies and objectives of 205A, HRS, the DLNR enforces land use laws governing Conservation District lands, including beaches. The authorizing statute is Chapter 183C, HRS.

Although not prohibited by the DLNR, the construction of shoreline structures is seriously discouraged as an erosion management practice, “except when they result in improved aesthetic and engineering solutions to erosion at the sites and do not interfere with existing recreational and waterline activities.”

Shoreline structures have potential to damage sandy beaches experiencing erosion. Understanding the dilemma faced by coastal property owners and government agencies faced with erosion threats, the DLNR has been busy identifying and developing alternatives to hard shoreline structures, including such things as beach nourishment, re-location of threatened structures, compensatory mitigation, temporary measures such as sea bags and other developing “soft” technologies, and dune preservation and restoration where possible.

The Hawaii Coastal Erosion Management Plan (COEMAP), Hawaii Coastal Hazard Mitigation Guidebook (in publication) and the Hawaii Erosion Alternatives (in publication), all provide guidance to coastal property owners, government agencies and coastal communities on the management of erosion problems.

In addition to remedial erosion solutions, the Coastal Hazard Mitigation Guidebook provides a complete discussion of coastal erosion avoidance measures. This concept is related to early planning to identify erosion hazards early in the development process so that structures will not need to be protected in the future – i.e., remediation avoidance.

The respective County agencies are responsible for the regulation of areas landward of the certified shoreline. This is accomplished through the Special Management Area (SMA), a county overlay zone in which the policies and objectives of Chapter 205A, HRS, and Chapter 23 Shoreline Setbacks of the Revised Ordinances of Honolulu. (ROH) are to be considered in the County land use development process.

For instance, with respect to beach conservation, the City and County of Honolulu Revised Ordinances of Honolulu, Section 23-1.2 states as follows:

- (a) *“It is a primary policy of the city to protect and preserve the natural shoreline, especially sandy beaches; to protect and preserve public pedestrian access laterally along the shoreline and to the sea; and to protect and preserve open space along the shoreline. It is also a secondary policy of the city to reduce hazards to property from coastal floods;*
- (b) *To carry out these policies and to comply with the mandate stated in HRS Chapter 205A, it is the specific purpose of this chapter to establish standards and to authorize the department of land utilization to adopt rules pursuant to HRS Chapter 91, which generally prohibit within the shoreline area any construction or activity which may adversely affect beach processes, public access along the shoreline, or shoreline open space”.*

Underlying all of these policies and objectives are the State’s environmental requirements under Chapter 343, HRS. For projects within the shoreline area, an environmental report (Environmental Assessment or EA) must be prepared that evaluates the impact of projects on coastal processes and beaches.

Projects must be shown to conform to relevant state and county policies and objectives, as in the above examples. Often the EA’s for shoreline development gloss over and fail to accurately acknowledge the proposed project’s conformance with the above stated policies and thus the true environmental impacts of these projects are often not revealed until the development is complete.

Why, despite all of these environmental policies do we continue to lose our beaches? While agency policies and objectives for beach conservation extend beyond regulatory lines, legal authority does not.

In fact, Section 205A-4(b), HRS, states “The objectives and policies of this chapter and any guidelines enacted by the legislature shall be binding upon actions within the coastal zone management area by all agencies, within the scope of their authority.” Thus policies that on paper extend beyond jurisdictional boundaries are difficult if not impossible to implement where jurisdiction, or lack thereof limits authority.

It would be much easier for the DLNR to effectively protect State beaches if it controlled development decisions in abutting upland areas. DLNR would have an active hand in community and infrastructure planning and would strive to site structures and facilities in such a way to protect both structures and beaches from the effects of erosion. Similarly, if counties were required by the constitution to protect public beaches they might withhold or require alterations to certain building applications for structures near the shoreline.

The Hawaii Coastal Zone Management Program (CZMP) could theoretically synthesize state and county planning processes within shoreline areas because CZMP policies and objectives extend from Hawaii’s mountain tops out to the seaward limit of the State’s police power and management authority.

The CZMP, with its agency networks and staff, can enhance beach and shoreline conservation by fostering cooperation between agencies to jointly implement CZMP policies, and by showing leadership in key resources areas such as shoreline management.

Unfortunately, this has not been the model. One reason for this is that they hold only minor permitting authority within coastal lands and are essentially powerless to implement changes in policy. While they do pass important federal funds to county agencies that theoretically require county adherence to federally mandated conservation goals, the CZMP has rarely chosen to exercise this authority in any meaningful way.

Nevertheless, DLNR is beginning to overcome these challenges in shoreline management. With the establishment of the Office of Conservation and Coastal Lands (OCCL) within the DLNR, and its network of key stakeholders including University of Hawaii scientists and the State Erosion Committee, efforts have been underway to assist county agencies with shoreline erosion problems. DLNR can offer help to Counties in several ways:

1. By promoting and developing sand nourishment, relocation, or remedial erosion control methods, the Counties feel less pressured to approve seawalls. The OCCL, in partnership with the University of Hawaii Sea Grant Program is developing new guidelines for remedial erosion management solutions via its publication and dissemination of “Hawaii Erosion Alternatives”.
2. OCCL is developing guidelines to assist County agencies with longer-term coastal planning issues. The concept is to avoid erosion hazards through early planning (e.g., requiring a developer to prepare an erosion hazard assessment as a prerequisite to acceptance of a subdivision application). With the proper data in hand, these measures can usually be implemented within existing county and state regulations, with acceptable benefit to cost ratios.
3. Identification of priority coastal areas that require immediate consideration of the coastal land use policies as well as classification of the existing coastal resources to enhance the prioritization of those areas for environmental assessment.

DLNR, working closely with the University of Hawaii, originally became involved in this effort by the formation of the State Erosion Committee, within the Office of Planning Coastal Zone Management

Program. This committee has brought state, county, and federal agencies together with public stakeholders to discuss shoreline issues.

The committee encouraged all of the counties, as well as other State agencies, to endorse COEMAP, which was the State's first strategic plan for coastal erosion management. An outgrowth of this was the 1999 passage of Act 84, the "Beaches Act" by the State Legislature creating a special fund for beach management under the authority of the DLNR. The next and critical step was to establish and empower the OCCL.

At a time when government agencies were being uniformly downsized, key state authorities had the foresight to create OCCL. The purpose of OCCL is to help resolve shoreline issues statewide, by showing leadership on critical issues, such as enforcement on illegal shoreline structures, beach restoration efforts, remedial erosion control solutions, integrated coastal management policies, and enlightened coastal planning.

Another purpose of OCCL is to develop educational materials and guidance manuals for coastal communities, the coastal engineering industry, and regulatory agencies, forming a comprehensive approach to the management of shoreline hazards. OCCL also serves as a clearinghouse for data and information on coastal processes. OCCL plans and implements demonstration projects of innovative approaches to beach management that are deemed likely to have application on a statewide basis.

The OCCL plan is to use these resources and knowledge to bridge the gap in shoreline management between state and local authorities that continues to cause significant turmoil in coastal areas.

This may be accomplished through the establishment of interagency policies that do not end merely with the extent of the agencies jurisdiction or "*within the scope of their authority*", but with comprehensive policies that treat shoreline management as a single integrated administrative unit and provide agencies with practical tools and skills necessary to improve management of these sensitive, and uniquely Hawaiian environments.

PROPOSED ACTION:

The OCCL seeks the authorization of the Board of Land and Natural Resources to pursue a Comprehensive Coastal Policy starting with an Integrated Shoreline Policy to conserve and protect beaches and coastal communities from the ravages of erosion and other coastal hazards.

This effort would begin with focused, goal-oriented discussions with the respective Counties to establish a consensus on the source of physical coastal problems and institutional weaknesses in addressing such problems.

It is envisioned that the agencies would enter into cooperative agency agreements with the goal of identifying and minimizing erosion hazards and impacts to state beaches. The actual agreement(s) will be developed with the input of the respective County, State, and Federal agencies.

Other State and Federal agencies could be included in the process to obtain as wide a spectrum of stakeholders as possible. The existing State Erosion Committee within the Coastal Zone Management Program (CZMP) would serve as an additional venue to promote the policy.

A number of resources would be used to promote and ultimately implement the policy including coastal erosion rate data being generated by the University of Hawaii, ideas and recommendations from the Hawaii Coastal Hazard Mitigation Guidebook, Hawaii Erosion Alternatives, and other resource materials as deemed appropriate.

The OCCL would serve as the lead agency and would report back to the BLNR periodically.

RECOMMEDATION

That the Board of Land and Natural Resources authorize the Department, starting with OCCL, to proceed with the formulation of a comprehensive Coastal Policy, starting with an Integrated Shoreline Policy for the State of Hawaii and authorize OCCL to work directly with the Hawaii Ocean and Coastal Council, County agencies and other agency stakeholders on the development of a policy to protect beaches and coastal communities from the negative impacts of erosion and other coastal hazards and that the OCCL report back to the BLNR on a quarterly basis on the status of this effort.

(Attachment 1)

Hawai'i: Coastal Issues ("Top 5" General Issues:)

The Changing Shoreline (natural and manmade)

- Coastal Hazards
- Erosion – shoreline retreat
- Impacts from shoreline hardening (seawalls, revetments, etc.)
 - Put in to protect property – yet erodes fronting the wall and neighbors
 - What is responsibility of the one who installs a seawall to the public & neighbors?
- Erosion Management (i.e. beach nourishment, relocation, buy out, shoreline hardening, etc.)

Public and Private Improvements

- Encroachment onto public property
 - Seawalls, landscaping, storage and stuff on the beach/coast
- Coastal buildings setbacks
 - Nature of the shoreline ought to dictate the nature of the setback
 - Shorelines are diverse (beach, rocky, cliffs, manmade)
 - Investigate alternatives to fit shore characteristics
- Investigate no build "Erosion" zones -like "Flood" Zones (or, "Build at own risk" zones)
- Coastal density (public need for open space, access & quality of life)
- Construction techniques (to address hazards, nature of the shoreline)

User Conflicts

- Native Hawaiian traditional and cultural rights
- Access (state law gives public right of access to and across shoreline)
- Carrying capacity concerns
 - Inherent conflict – want to increase public use - yet - not over-burden fragile resources
 - When and to whom do we say "no more?"
 - Will be a growing concern as population/visitor increase
- Commercial activities
 - They satisfy a need and want, yet they get into conflicts with other uses/users
 - Concern that a few are making money off the resources
- Conflicts between & within user groups
- Inadequate infrastructure for cruise ships
 - Docking – mooring impacts on reefs, near shore waters
 - Thousands of people off-loading onto small harbors – limited facilities, access

Near shore water concerns

- Water quality
- Sedimentation & run-off: urban, construction, agriculture, natural, etc. (Bacteria/pathogens)
- Decline in fisheries
- Concern about ballast water, hull-fouling & waste disposal from ships
- Degradation of marine ecosystem

Resources - Jurisdiction

- Enforcement challenges (too much reactionary, after-the-fact enforcement – need pro-active)
- Funding alternatives
- Cooperative approach (State w/Counties and communities) looking beyond jurisdictional lines
- Permit simplification

Hawai'i: Coastal Questions (Specific questions to see how others deal with coastal concerns:)

Jurisdiction – How do others deal with joint and/or conflicting coastal jurisdictional matters?

Challenges:

The certified shoreline marks the jurisdictional boundary along Hawai'i's coastline. The State has jurisdiction (and typically ownership) seaward of the certified shoreline; the Counties have jurisdiction over the land uses (SMA, zoning, building, etc.)

In Hawai'i each County can set its own standards and protocols (zoning codes, building codes, setback determinations, etc.)

The State and Counties are not used to working well together.

Shoreline Armoring - How do others deal with seawalls, impacts to the area fronting the wall and surrounding property, and responsibilities of property owners?

Challenges:

Seawalls and other shore armoring/hardening structures are put in to protect property, yet this typically causes further erosion of the shoreline fronting the wall and erosion to the shoreline of the neighbors.

What responsibility does a property owner that installs a seawall have to the public and his neighbors?

Carrying Capacity – How do others deal with the growing number of coastal users and the conflicts that arise with competing uses?

Challenges:

There is an inherent conflict: we want to increase public use of public property, yet at the same time not over-burden fragile resources.

When and to whom do we say “no more?”

This is a growing concern as population and visitor numbers increase.

Though commercial operations satisfy consumer needs and/or wants, many in the public are concerned because they see a few making money off the (public) resources.

Conflicts are developing between and among commercial uses and the general public – “taking over” portions of the beach/coastline, taking over areas in the near-shore waters.

Building Setbacks – How do others deal with coastal building setbacks?

Challenges:

Hawai'i State law sets a minimum building setback of 40-feet from the certified shoreline; Counties can set farther distances.

To date, the setback process has not addressed specific characteristics of the shoreline fronting the property (i.e. building setbacks on a non-eroding lava cliff are the same as for properties that have an eroding sandy beach.)

Maybe we should consider no build “Erosion” zones – similar to “Flood” Zones

Cruise Ships – How do others deal with the cruise ship industry in their near shore waters & ports?

Challenges:

There is a growing cruise industry developing in Hawai'i. Infrastructure at the various ports is inadequate to handle the existing usage and more and more ships are calling to our ports. Likewise, there is concern about environmental impacts due to the increasing numbers of vessels and passengers coming to the islands.

Hawai'i: Lessons Learned (and things we are trying:)

User Conflicts

Department of Land and Natural Resources is finalizing “commercial activities” rules and permits to manage these activities. Carrying capacity studies are being prepared for some of the “hot spots” estimating limits of uses (kayak, snorkel and scuba tours, use and storage of equipment on beaches, etc.) as well as estimating infrastructure needs.

Building Setbacks

Maui County recently adopted a building setback ordinance that is based on historic erosion patterns around the island. Rather than a fixed 40-foot building setback, construction is placed based on a distance of 50 times the annual erosion rate for the site plus 20-feet. The County has long-term aerial photographs of the changing shoreline and estimated the site-specific erosion rate for coastal property around the island. The intent is to permit new construction a safe distance from the eroding shore, based on a generalized 50-year building useful life.

Jurisdiction

Led by the Director of the State Department of Land and Natural Resources, a cooperative State-based group is forming (to later include Counties and others) to address “Coastal Issues.” Participants include Deputy Directors from the State Departments of Land and Natural Resources, Health, Transportation, Business Economic Development and Tourism, as well as leadership from the University of Hawai'i (School of Ocean & Earth Science and Technology - Department of Geology and Geophysics,) Office of Planning, Tourism Liaison and Coastal Zone Management.

The State Administration is investigating whether we should pursue a Memorandum of Agreement (MOA) with all of the Counties to address coastal management and jurisdictional issues - immediate areas of concern are seawalls and setbacks. At present, we each share in the management and jurisdiction of these matters; and, we don't always do the same thing the same way. The MOA would specify collaborative, consistent approaches.

Expedited Beach Nourishment Permit

Through the Department of Land and Natural Resources, we are in the final stages of establishing an expedited small-scale (up to 10,000 cubic yards) sand replenishment permit. The hope is with an expedited nourishment permit, coastal property owners will elect to replenish their beach frontage, rather than construct a seawall.

Coastal Policy

Staff for the Department of Land and Natural Resources is considering a comprehensive “Coastal Policy” (for ultimate Land Board approval) that will address a variety of coastal concerns (the limited situations where seawalls may be considered, responsibility of parties when seawalls are constructed, statewide building setback policy (statutory changes may be required,) permitted uses on public beaches, hierarchy of priorities when addressing impacts to natural and cultural resources and/or user conflicts, etc.)